UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1994/SR.21
22 August 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-sixth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 August 1994, at 3 p.m.

Chairman: Mrs. ATTAH

later: Mr. BENGOA

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GE.94-13711 (E)

The meeting was called to order at 3.10 p.m.

FREEDOM OF MOVEMENT

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (agenda item 19)

1. Ms. BURKE (Women's International League for Peace and Freedom), also speaking on behalf of the International Abolitionist Federation, drew the Sub-Commission's attention to the particular problems faced by the women who made up more than half the total of migrant workers and suffered sexual, as well as racial and economic, discrimination. Women were often driven to migrate to escape the cycle of poverty in their own countries, only to find themselves forced to accept low-paid work without social prctection in their new country of residence. Women migrant workers were particularly vulnerable to unhealthy and unsafe working conditions and easily became a prey to the sex industry, often becoming virtual slaves in the brothels of major cities.

2. Only through effective coordination among the various United Nations bodies and agencies could a solution be found to the problems faced by migrant workers. The Working Group on Contemporary Forms of Slavery, the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and the Special Rapporteur on violence against women should be encouraged to consider human rights violations and discrimination against migrant workers as part of their mandates. Meaningful coordination between the International Labour Organisation (ILO), the International Organization for Migration (IOM) and the various human rights bodies, including the Centre for Human Rights, would ensure the effective dissemination and use of information concerning migrant workers.

3. It was also vitally important that the Sub-Commission should urge States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and States should also be encouraged to adopt effective national policies to promote the protection of migrant workers within their borders. Close cooperation and communication was required between sending and receiving States to guarantee fair treatment for all migrant workers. The standards to protect migrant workers and their families already existed; what was needed was effective implementation of those standards together with continued monitoring of the situation of migrant workers throughout the world.

4. Ms. GILLESPIE (Pax Christi International), having commended the work done by the Sub-Commission in identifying violations of human rights, said that her organization was deeply concerned by the lack of regard paid by Governments to its resolutions, often on the grounds that the alleged violations were a purely domestic matter.

5. A specific example had been the refusal by the Government of Papua New Guinea to act on the Sub-Commission's resolution, adopted by consensus in 1992, calling for the restoration without delay of the freedom of movement of the inhabitants of Bougainville.

6. The continuing military blockade of Bougainville was not only denying its inhabitants freedom of movement but also impeding the delivery of medicines

and other essential supplies. As a result, according to local Red Cross estimates in November 1992, more than 2,000 children had died from preventable diseases and hospitals in the blockaded areas had been forced to close wards. Seriously ill people trying to escape to the Solomon Islands in search of medical treatment were routinely fired upon by members of the armed forces maintaining the blockade.

7. In one particular incident on 15 December 1992, Defence Force troops maintaining the blockade had fired on Bryan Leak, a Catholic monk, and 11 other civilians including women and children, using an Australian-supplied Iroquois helicopter as a weapons' platform. The occupants of the boat had managed to escape to safety as the soldiers continued firing. Amnesty International had, in its report "Papua New Guinea: Under the Barrel of the Gun, Bougainville 1991-1993", mentioned that and many similar incidents in which unarmed people had been fired on by Defence Force soldiers while travelling in the coastal waters around Bougainville, in clear violation of the right of freedom of movement.

8. In 1993-1994, the situation had deteriorated and the blockade had been tightened. Many civilians had sought refuge from the Defence Forces in the mountains, where the colder climate, combined with the shortage of suitable clothing, had increased the risk of illness, especially among small children. Many babies had died of respiratory infections, since there were no antibiotics to treat them with. Their parents could neither return to their own villages nor attempt to leave for the Solomon Islands to seek medical help. Thousands of children were still at risk, and the situation demanded urgent attention. The organizations she represented requested the Sub-Commission to reaffirm the existing resolutions concerning Bougainville, explore ways of implementing them and, in particular, call for the blockade to be lifted as a matter of urgency.

9. Mr. FAI (International Islamic Federation of Student Organizations) drew attention to the denial of freedom of movement which had resulted from the continuing conflict in the State of Jammu and Kashmir. Among the many individuals in that area who were unable to move freely were Dr. Ayub Thuker, whose passport had been confiscated in 1993 by the Government of India without any reason being given, and Syed Ali Geelani and Abdul Gani Lone, who had been named prisoners of conscience by Amnesty International.

10. Freedom of movement was one of the most fundamental of all freedoms and was enshrined in the Universal Declaration of Human Rights. It was recognized as an essential element in any society with free and democratic institutions. The apparent need of certain Governments to restrict or suspend that right suggested a fundamental popular dissatisfaction with their rule. The Sub-Commission should continue to monitor the human rights situation in that regard throughout the world, and should do everything in its power to persuade the offending Governments to protect the right to freedom of movement.

11. Ms. WARZAZI, referring to the difficulties faced by migrant workers and their families, said that discussions on the agenda items relating to racism and the protection of minorities had shown that migrant workers were increasingly living in a climate of xenophobia, racist attacks and insecurity, especially in the industrialized countries. That was all the more disturbing in view of the huge increase in migration resulting from the severe economic

difficulties of the countries of origin and the ever-widening gulf between the rich and poor countries. It seemed unlikely that the problem would simply go away. The serious violations of the rights of migrant workers called for continued vigilance by the international community.

12. The collapse of the old bipolar world system had meant the disappearance of an easily identifiable "natural" enemy, and there was currently a tendency to regard as the "enemy" anyone who appeared to pose a threat, anyone who jeopardized the calm normality of everyday life, or took jobs that no one else wanted to do. In the host countries which received migrant workers, the enemy was often seen as anyone from the South who asserted a claim to some small share in the general prosperity, anyone who, having contributed to such prosperity, claimed anything as of right.

13. It was regrettable that the efforts made thus far with respect to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had not resulted in many ratifications. In spite of the tragic situation of most migrant workers, the host Governments were not accountable for the discrimination so often practised against them, or for the physical attacks and other crimes perpetrated against them in their homes, in the streets and even in police stations.

14. To her knowledge, no non-governmental organization had ever taken up the defence of those workers, nor had she ever managed to obtain a list of migrant workers who had been assaulted or murdered. Moreover, while many Governments were debating the problem and drawing up various projects to assist migrant workers, their main priority appeared to be to close their borders and restrict the numbers of migrants allowed in. Every effort must be made by the international community to ensure the protection of the rights of migrant workers and their families and to put an end to the human rights violations which they had traditionally suffered.

15. Mr. AL-SOURCHI (International Human Rights Association of American Minorities) drew attention to the severe restrictions on the freedom of movement of peoples living in the Mosul Vilayet, and especially the particular dimension of forced displacement which had been addressed in the draft declaration on the rights of indigenous peoples.

16. The people who inhabited the area were still suffering the effects of forced displacements under successive regimes - the displacement of the Assyrians in 1933, of the Arab and Kurdish Jews in the 1940s, and of the Kurds forced to leave some 4,500 villages destroyed during or after the war with Iran. All of those actions had been in violation of the still binding Declaration of 30 May 1932 of the Kingdom of Iraq.

17. Reports by the Special Rapporteur on the situation of human rights in Iraq had graphically illustrated the effects of the forced displacement of the Kurds from their ancestral lands and the other violations associated with it, including the "Anfal" programme. The internal aggression against the people in the area, combined with the effects of the double embargo imposed by the United Nations and the Baghdad Government, had effectively prevented any freedom of movement for all but a very few.

18. However, there were some grounds for hoping that a consideration of the historical background to the situation might help in the search for a solution. He hoped, in particular, that the Sub-Commission and the Special Rapporteur on the situation of human rights in Iraq would take account of the League of Nations report Question of the Frontier between Turkey and Iraq, published in 1925, containing the still relevant findings and recommendations of the League's Commission of Inquiry which had shed much light on the ethnic, economic, religious and linguistic conditions in the area of the Mosul Vilayet. He suggested that the international minority protection guarantees contained in the 1932 Declaration might serve to prevent potential conflicts.

19. Mr. GILANI (World Society of Victimology) said that there had been little enthusiasm on the part of the United Nations bodies to enforce the right of freedom of movement within and between States, and violations in that area by some Member States had not attracted any significant condemnation. The international community would incur the censure of future generations if it failed to persuade States to comply with article 13, paragraph 2, of the Universal Declaration of Human Rights and article 12, paragraph 2, of the International Covenant on Civil and Political Rights, and those denied freedom of movement might well be inclined to question the credibility of the United Nations and its machinery. Effective measures needed to be adopted to ensure that offending countries would be made publicly accountable for violations of the right.

20. In the specific case of Kashmir, the right to freedom of movement had long since ceased to exist. Among those affected had been a number of eminent members of the Kashmir judiciary, who had been scheduled to attend the current session of the Sub-Commission but had been unable to come.

21. It was particularly important that individuals should be made aware of their rights, and that administrative and judicial authorities should be aware of the obligations which their Government had assumed. Significantly, the Human Rights Committee had expressed the view that a State party was accountable under the International Covenant on Civil and Political Rights for violations of the Covenant committed by its agents in the territory of another State, and that no restriction must be imposed on any right guaranteed by the Covenant.

22. Ms. GOLBERT (International Association of Educators for World Peace) said that, for some people, the right to leave and to return to one's country and the right to freedom of movement within it were considered basic and unquestionable rights upheld by national and international law. However, that was not so in many countries. Cases of denial of, or restrictions on, that basic right still existed to various extents. Such restrictions might be supported by clear and logical arguments relating to economic, social and political stability, local or national economic development, or public or national security. However, her organization believed that, unless those restrictions were proved to be in accordance with international law, they clearly served to deny people their basic human rights.

23. In his final report submitted to the Sub-Commission at its fortieth session in 1988 (E/CN.4/Sub.2/1988/35 and Add.1 and Add.1/Corr.1), the Special Rapporteur, Mr. Mubanga-Chipoya, had referred to the right to freedom of movement within a State, affirming that States must abolish any internal

restrictions other than those consistent with international commitments. That also applied to restrictions concerning the right to leave and return to one's own country. The Special Rapporteur had pointed out that, unfortunately, a number of people were still effectively confined behind their national boundaries on grounds of alleged national interests, which included the desire of some Governments to keep their nationals out of touch with rival ideologies prevailing in other countries. If national interests and stability were truly in question, then actions such as local, national and international educational and economic incentives must be undertaken to encourage - but not to force - nationals to remain in a certain region or generally within their country.

24. In many developing countries, government policies restricted people to their region of origin. In China, for example, that was done by issuing region-specific permits which were very difficult to change and which provided people with access to housing, jobs and pre-university education. Spouses often found themselves, of necessity, living and working in different regions. Such policies could divide families for years.

25. The restrictions on freedom of movement were even more extreme for the national minorities in China, particularly in autonomous regions. Often the wealth and resources of those regions had been drained, with little national investment in the region's education and economy. Individuals who were permitted to attend a university in another region and were expected to return to their place or origin to work found few job opportunities when they came home; nor did opportunities await them elsewhere.

26. Government policies of discrimination against national minorities served to restrict their freedom of movement and their very survival. China's autonomous regions of Tibet, Xinjiang, and Inner Mongolia were major cases in point. China claimed to have 55 national minority groups. The discriminatory policies of denying the right to freedom of movement, which was linked to other rights such as the rights to housing, jobs and education, had vast repercussions.

27. Furthermore, nationals in China and elsewhere faced serious restrictions on their right to leave their country. The Government feared that anyone working, studying or even travelling abroad would not return home unless considerable incentives were provided. The Chinese Government, for example, carefully screened its nationals' applications for exit permits to work or study abroad. At times it maintained applicants' links with their country by preventing their family members from joining them. Such a policy served to divide families, sometimes for years. The Special Rapporteur had dealt with such policies in his conclusions to his final report, listing the kinds of gross violations of the right to leave that often divided parents and children, impinging upon the right to family preservation and reunification.

28. In his final report, the Special Rapporteur had also dealt with the right to asylum and, more specifically, diplomatic asylum, stating that diplomatic asylum was granted by States to persons who, according to the granting State, were persecuted for political reasons and that, in the case of diplomatic relations being broken off, the person granted asylum must be allowed to leave the country together with the diplomatic representative who had granted the asylum. China and other countries had denied such people the right to leave

the country. Political dissidents were also denied the right to leave and to seek political asylum. When seized, they often joined the ranks of political prisoners.

29. However, China and other States that continued to deny their nationals freedom of movement were not the only abusers of the right to freedom of movement. Even if more people were given freedom to leave their native countries, they would be confronted with limits on their freedom to enter other countries. The Special Rapporteur had stated that the right to leave was directly dependent on the possibility of entering another country, and that both those aspects of the freedom of international movement should be dealt with at one and the same time.

30. The international human right to asylum was also dependent on the possibility of entering another country. The Special Rapporteur had pointed out that, while a State had no obligation to grant asylum, it had an obligation not to return a refugee to a country where he would be subjected to persecution (non-refoulement) and that no person covered by article 1, paragraph 1, of the 1967 Declaration on Territorial Asylum should be subjected to measures such as rejection at the frontier or refoulement.

31. The United States of America had, however, recently returned boatloads of Haitian refugees to their country of origin, although it was clear that people in Haiti were suffering from political persecution and not just from economic deprivation. The United States of America was not alone in its violations of international humanitarian law, since other countries had also refused to give refuge or asylum to boatloads of Haitians fleeing from persecution.

32. Finally, citizens of neighbouring countries did not always enjoy an equal right to movement across the common border. For example, while United States citizens crossed the border into Mexico relatively freely, Mexican nationals found themselves more severely restricted. In all cases, the right to freedom of movement across national borders should be ensured as a prerequisite to peaceful, egalitarian relations between nations. Those kinds of international double standards must be ended. International bodies, particularly the United Nations, must actively encourage compliance with freedom of movement, as guaranteed in the Universal Declaration of Human Rights, with a view to achieving both national and international peace and security.

33. Mr. EIDE said that, in view of the increase in xenophobia and the insecurity encountered by migrant workers and their families, there was an urgent need to call on all States to ratify the International Convention on Migrant Workers. The closing of national frontiers to refugee migrant workers had led to clandestine trafficking in persons. The conditions of transport were sometimes very dangerous and, even if the migrant workers managed to enter their state of destination illegally, they lived in continuous insecurity because they could not apply to the authorities for protection from extortion and the exploitation of their labour. That aspect of the situation should be considered by the Sub-Commission.

34. The expulsion of resident non-citizens, often for quite minor offences, might prove to be a tragedy for the person concerned and for his family. The Council of Europe was trying to develop a case-law on the subject. Sometimes the right to return to one's own country was complicated by the question as to

what was meant by "one's own country". Long-term residents of a State who were not citizens were often not permitted to return to their homes. They should be included in the category of persons having the right to return to their "country of origin". Moreover, in view of the alarming proportions assumed by "ethnic cleansing", the Sub-Commission should make clear by a resolution that the right to freedom of movement comprised the right to remain in peace in one's own home, on one's own lands and in one's own country. A sub-item entitled "Population displacement" should be included under item 19 of the Sub-Commission's agenda.

35. Many problems, particularly those relating to "ethnic cleansing" and population transfers and displacements, derived from conflicts between ethnic groups, and many of the activities involved were prohibited under international humanitarian law. It was therefore important for the Sub-Commission to continue its examination of the Declaration of Minimum Humanitarian Standards, which it could transmit to the Commission on Human Rights before the end of 1994.

36. Mr. FRANCO (Director of International Protection, Office of the United Nations High Commissioner for Refugees) said that it was encouraging to note that the Sub-Commission was dealing with a number of topics directly relevant to UNHCR's mandate. Not only was refugee law deeply rooted in human rights law, but UNHCR was an operational human rights organization for the protection of refugees. Violations of human rights were very often at the origin of refugee flows, and coerced departure itself should be understood as a violation of the human right to remain peacefully in one's home.

37. Refugees and asylum-seekers were entitled to respect for their basic rights, since their status made them particularly vulnerable to further human rights violations. Moreover, the right of refugees to return to their homes could not be implemented as long as the conditions which had compelled them to flee persisted and insufficient human rights guarantees were provided in their country of origin. In short, respect for human rights was a crucial element in the prevention and solution of refugee problems. As contemporary policies and practices of forced deportation, expulsion and "ethnic cleansing" illustrated, there was a continuing need for the Sub-Commission to pay close attention to ongoing violations of the right to freedom of movement in the broadest sense.

38. The prevention of refugee flows was a key component of UNHCR's strategy. To end the plight of refugees and internally displaced persons, the international community would have to find ways to deal effectively with the root causes of forced displacement, so as to reduce the need for people to leave their homes in the first place. In that context, UNHCR stressed the need to affirm the right of people to remain in peace in their homes, on their own lands and in their own countries. That right could logically be understood as a corollary to the right to freedom of movement, since it necessarily entailed the right not to be forced to move.

39. Forcible transfers of population, relocation within a country or conditions that forced people to cross international borders necessarily violated a person's right to remain. Thus, from the concept of a "right to remain" derived the illegality of expulsion, denationalization, exile and the

denial of return and, implicitly, of ways of pursuing political or economic objectives that caused masses of people to fear so deeply for their lives or security that they became refugees.

40. Another aspect of the right to freedom of movement was the right to return to one's own country. Deportations and denationalization, followed or preceded by mass expulsions and forced exile, were ipso facto violations of the right to return. The implementation of the right to return through voluntary repatriation was crucial to the solution of refugee problems and posed one of the major challenges currently facing the international community and UNHCR. From UNHCR's perspective, the human right to return entailed the basic right of the refugee to return voluntarily and in safety and dignity to the country of origin and, within it, to the place of origin or choice. Returning in safety meant returning under optimum conditions of legal, physical and material security, while returning in dignity implied that the refugees' basic rights and freedom were restored in their country of origin so that they could start meaningful lives with self-esteem and self-confidence.

41. Furthermore, all States, and particularly countries of origin, had a responsibility to deal with the root causes of refugee movements and to create conditions allowing the exercise of the right to return. An improvement of the human rights situation in the country of origin was a fundamental requirement for the exercise of the right to return. One of the ways to ensure that conditions conducive to the return of displaced persons were established was to take measures aimed at adequately punishing perpetrators of serious violations of human rights and humanitarian law that led to population displacement. Another way of promoting confidence that a genuine improvement of the human rights situation in the country of origin had occurred and of thus contributing to the return of displaced persons in safety and dignity, was the early establishment of international human rights monitoring mechanisms. UNHCR had an important role to play in monitoring the treatment of returnees and thus wholeheartedly supported all initiatives taken to strengthen human rights monitoring, with particular reference to the recent proposal by the High Commissioner for Human Rights to place teams of human rights monitors at different locations in Rwanda.

42. However, arrangements for the return of refugees and displaced persons to their places of origin must be humanitarian in objective and must represent a solution to the prevailing problem. They should not form part of a strategy aimed at continuing an armed conflict. The return of refugees and displaced persons to places other than their places of origin should not be used to repopulate areas so as to preserve or gain control of them or to consolidate military conquests or form part of a process of ethnic relocation to consolidate and complement ethnic depopulation and population transfers. Similarly, the right to remain should not be interpreted as a right to consolidate ethnic relocation and the repopulation of territory.

43. The emerging emphasis on the right to remain and the right of refugees to return should in no way be understood to detract from the crucial principle of non-refoulement, which was essential to protect people whose right to remain at home had been violated. Non-refoulement had always been, and continued to be, the cornerstone of the international protection of refugees. It was expressed as an obligation of States in the 1951 Convention Relating to the Status of Refugees and had gained recognition through regional refugee

instruments and, at the universal level, as part of customary international law. Despite broad acknowledgment of the principle, however, refugees continued to be refused entry or forcibly expelled, sometimes in very large numbers and in situations of grave danger.

44. One of the areas of mutual interest to the Sub-Commission and UNHCR was the issue of population transfer. Since UNHCR was involved in a number of situations where population transfers were pursued as a matter of policy or even as the prime objective of a conflict, it noted with satisfaction that the Sub-Commission was devoting systematic attention to the problem. The question of population transfer should, from UNHCR's point of view, be considered within the broader context of violations of human rights and humanitarian law as the cause of refugee-generating situations.

45. UNHCR wished to compliment the Special Rapporteur on the human rights dimensions of population transfer on his preliminary report (E/CN.4/Sub.2/1993/17 and Corr.1) and progress report (E/CN.4/Sub.2/1994/18 and Corr.1), and welcomed the comprehensive overview of the legal and human rights aspects of population transfer provided therein. UNHCR subscribed to the well-founded conclusion of the preliminary report that population transfer was, prima facie, unlawful and a violation of elementary human rights and humanitarian norms. It was especially heartened by the identification of an emerging right of populations not to be subjected to population transfers and the recognition of free consent as the guiding principle in the movement of people.

46. UNHCR also welcomed the emphasis placed by the Special Rapporteur in his progress report on State responsibility in the context of population transfers, a basic premise of which was that the State responsible for a wrongful act had a duty to cease the wrongful act and to make reparation. Applied to victims of population transfers, that premise confirmed the inalienable right of all refugees and displaced persons to return to their homes so as to reverse the illegal act as well as the duty of the State that had committed the act to ensure conditions for safe return, including human rights guarantees.

47. An increasing focus on State responsibility led to a growing emphasis on the right not to be unjustly compelled to leave home and the duty of States to allow refugees and displaced persons to return home in safety and dignity. In that connection, UNHCR might be able to provide some useful ideas to the Special Rapporteur. In any case, it suggested that he should include in his final report an analysis of what constituted "force" in the moving of populations, a clarification of the notion of "consent", and an indication of the means by which, in his view, the consent of a population to move could be obtained in practice. There again, some of the concepts developed in the context of refugee protection might prove helpful. However, UNHCR would like to draw the Special Rapporteur's attention to the difficulty of ascertaining whether there really was consent and voluntariness in the displacement of a population or persons from their homes. Alleged voluntariness in the act of moving should never serve as a justification for creating conditions that compelled a population or persons to leave their homes.

48. Furthermore, the legality, desirability and human rights consequences of population exchanges, e.g. as part of a peace agreement between States in the

aftermath of a conflict, was an issue in urgent need of attention. Related to that point was the question as to how to deal with an original illegal act of forcibly moving people or implanting settlers when durable solutions were being sought, particularly in situations that had prevailed for a long period of time. In that connection, UNHCR welcomed the decision to convene a seminar of experts on the different human rights dimensions of population transfers and urged the Sub-Commission to include among its participants persons directly involved in population-transfer situations and persons affected by the practice.

49. Another area of shared interest between UNHCR and the Sub-Commission was the question of humanitarian activities. UNHCR noted with great interest the comprehensive preparatory document submitted by Mrs. Palley on the implications of humanitarian activities for the enjoyment of human rights (E/CN.4/Sub.2/1994/39), which recognized a number of very important dilemmas facing the United Nations, such as the conflict between the political and humanitarian aspects of complex United Nations operations that included the repatriation of refugees and the potential for conflict between the aim of restoring peace and that of achieving long-term observance of human rights, including the right of displaced persons to return home. As suggested in the preparatory document, an individual right to seek humanitarian assistance and protection should not detract from the well-established right to seek asylum and enjoy protection. UNHCR hoped that Mrs. Palley's excellent and timely document would provide the basis for an in-depth study by the Sub-Commission.

50. The protection of minorities was of great relevance to UNHCR's mandate, since the ground for granting refugee status was often membership of a persecuted ethnic or religious group. Accordingly, in carrying out its mandate to protect refugees, UNHCR should take into account the development of standards of minority rights. Faced with the complexity of minority issues, UNHCR's approach had evolved from the protection of victims of discrimination and persecution towards a greater emphasis on the early detection, warning and prevention of conflicts involving minorities. In many cases, information on situations having a potential for escalation was indeed available. However, existing mechanisms must be strengthened and, if appropriate, new and effective mechanisms must be instituted to respond to such early indications of potential conflict. UNHCR therefore welcomed the proposal for the establishment of a working group on minorities and encouraged the broad participation of representatives of minority groups in such a forum.

51. The Sub-Commission's work was important for the prevention of situations that would give rise to refugee flows in the future and to ensure immediate respect for the human rights of people who had already become refugees or internally displaced. In that connection, UNHCR would continue its cooperation with the Sub-Commission, the Centre for Human Rights and the other relevant international bodies.

52. There were currently more than 20 million refugees and an even larger and growing number of internally displaced persons in the world. If no measures were devised to ensure the immediate cessation of practices that violated human rights and caused the forced displacement of people from their homes, those numbers were bound to rise. UNHCR therefore urged the Sub-Commission to affirm the right of everyone to return voluntarily and in safety and dignity to his or her place of origin and the right of everyone to remain in peace in

his or her own home. Mr. Eide's reference to the submission of a draft resolution on that issue was therefore welcome. Also, under agenda item 19, the Sub-Commission should analyse the different aspects of the broader issue of displacement and discuss contemporary cases of displacement and population transfer.

53. Ms. ANDREEVSKA (Observer for the former Yugoslav Republic of Macedonia) said that, despite the immense improvements in many spheres of life, the position of the individual in modern society was increasingly insecure. The cost of the significant improvements made had been a substantial destruction of traditional values. Uncertainty, insecurity and vagueness as to the individual's position in the world formed part of the climate in which modern man enjoyed the fruits of general and technical progress. Consequently, there was a need for a genuine and universal application of human rights.

54. The large numbers of migrant workers in the world from various countries, primarily developing countries, had led to the adoption of international conventions by ILO and of a large number of bilateral agreements. The need for the adoption of international standards to improve the position of migrant workers had appeared in the late nineteenth century, indicating that the situation had been serious even then. It was still so in the contemporary world, when the situation of migrant workers was greatly aggravated by the increase in xenophobia and unemployment due to the recession, which had caused States hosting migrant workers to take preventive measures. Unfortunately, however, the chain reactions triggered off by those measures, had worsened the position of migrant workers whose fundamental human rights were being violated, and had led to a deterioration in bilateral relations between certain countries.

55. Her own country was a country of emigration, with 1.2 million of its nationals working abroad, virtually all of them in Western Europe. Her Government was therefore anxious that the international community and the Sub-Commission should help to prevent further violations of the rights of migrant workers and to improve their position. The greatest contribution could be made through the observance of the bilateral agreements concluded and of the international instruments adopted on the subject, as well as by continuous monitoring of the human rights situation of migrant workers by the international community.

56. Mr. HUSSEIN (Observer for Iraq) said that his delegation regretted the statement made by the representative of the International Human Rights Association of American Minorities.

57. According to Kurdish sources, the individual concerned and his group had confiscated property in the north of Iraq worth more than US$ 1 million which had been transferred abroad and sold to foreigners. That individual belonged to one of the criminal groups which were taking advantage of the lack of law and discipline in the north of the country. He was not representative of the Kurds in northern Iraq.

58. Iraq would remain unified and would defend the rights of all its minorities and peoples. It was regrettable that such a criminal group should be allowed to speak of behalf of a non-governmental organization having consultative status with the United Nations.

59. The CHAIRMAN said that the Sub-Commission had concluded the general debate on item 19 of its agenda.

IMPLICATIONS OF HUMANITARIAN ACTIVITIES FOR THE ENJOYMENT OF HUMAN RIGHTS (agenda item 20) (E/CN.4/Sub.2/1994/39)

60. Mrs. PALLEY, introducing her further preparatory document (E/CN.4/Sub.2/1994/39) on the question of the role of the United Nations in international humanitarian activities and assistance and human rights enforcement, said that her paper gave many examples indicating why a comprehensive review of the competence of United Nations organs in their humanitarian and human rights spheres was necessary. A deeper analysis of the relations between the various United Nations organs was essential, because other United Nations organs and agencies were concerning themselves with their own specialist competencies in an uncoordinated fashion. Only the Sub-Commission had the expertise, independence and drive to embark on a comprehensive review.

61. She had tried to list the legal, as opposed to the political, issues raised by the proliferation of United Nations mandates in the humanitarian and human rights spheres. Some of the questions which arose included the following: whether the United Nations armed forces were established by any organ bound by international humanitarian law and, if so, to what extent; whether the United Nations and all its personnel acting officially were bound by human rights law and what the content of the applicable law was; whether the Security Council was empowered to establish a judicial tribunal with criminal jurisdiction in respect of crimes committed during armed conflicts and to subject individuals to its jurisdiction; whether the Security Council could establish bodies with governmental powers within States and, if so, whether such a body had duties to apply human rights and justice; whether United Nations administrators could tolerate impunity; whether the Security Council had power to endorse, impose or recommend a political peace settlement that legitimized human rights violations, crimes against humanity, genocide and the fruits of aggression; whether the Security Council had power in situations where humanitarian assistance was required within State borders, without the consent or acquiescence of the host State, to secure access for aid purposes, deliver aid, employ measures other than force, such as economic sanctions, to enforce implementation of those purposes, and/or employ forcible measures for such purposes; and whether the Security Council also had the power to intervene to stop human rights violations, including cases where self-determination had been thwarted by internal action and, if so, which measures it was entitled to employ.

62. There were some other relevant questions also. If States were accorded political mandates of sovereignty subject to any Charter limitations, the question arose whether there was judicial power to interpret Security Council decisions and evaluate their application in practice, if there were proceedings before the International Court of Justice alleging a decision to be in conflict with such State mandates. There was also the question whether the Court had jurisdiction to pronounce on the non-conformity of Council action or decisions with the Charter provisions and, if so, whether that permitted the Court to evaluate in terms of all or any of the elements mentioned as United Nations Purposes and Principles in Articles 1 and 2 of the Charter? Finally, the question had to be asked whether the administrative and

constitutional structure of the United Nations was in need of revision because of a lack of competence by any principal organ, and/or a lack of legitimacy of particular organs either because of their modus operandi or their composition.

63. Some of those issues needed to be covered by a study before rather than after administrative or other rearrangements had been made: a study was needed to feed into the preceding debate. However, no Sub-Commission study should or would delay reform.

64. Those concepts were increasingly, perhaps deliberately, being confused in the practice of certain United Nations organs. Clarification of concepts was not the forte of Governments or executive bodies, which preferred to have a fuzzy discretion. Without clarification, however, there was a grave risk that unilateral military intervention by a State or group of States, relying on implied or even express authority from a particular United Nations organ, would become increasingly frequent. The likelihood would then arise of the resurrection and practice of unlawful nineteenth century concepts of humanitarian intervention and of aggression masquerading under that name.

65. Similarly, human rights violations and humanitarian situations were being advanced as justification for economic intervention but the propriety of such action had not been mapped out. Unless all those questions were properly examined, the practical outcome would undermine the world consensus on human rights questions. Instead, human rights would be politicized, with State self-interest invoking currently developing practices as justification for interference within the domestic jurisdiction.

66. One last point that she wished to make related to certain behind-the-scenes manoeuvring. At the Sub-Commission's previous session, the representative of the United States had made it clear that his Government did not want a study on humanitarian activities, the argument being that such a study would be premature, delicate, too wide-ranging and beyond the competence of the Sub-Commission. The United States Government had then sent formal written démarches to the Governments of most of the Sub-Commission members asking those Governments to instruct their nationals, members of the Sub-Commission, to oppose such a study. It had also been asserted that the arguments in such a study might be invoked to impede the unlimited discretion of the Security Council or could be used by persons or small States critical of or challenging that power. Nevertheless, the Sub-Commission had approved the study.

67. The United States delegation had pursued the issue further at the last session of the Commission on Human Rights with the result that, using the pretext that the Sub-Commission was breaching its own Guidelines, the Commission had referred all new studies, including the humanitarian activities study, back to the Sub-Commission for reconsideration with the injunction that the Sub-Commission must fully implement its own Guidelines.

68. She hoped nevertheless that the study on humanitarian activities would once again be approved by the Sub-Commission, since it was even more timely than it had been in the previous year. A situation existed where actions were being taken, or not taken, against particular countries on legal bases which were unclear and where certain States appeared to be utilizing the lack of

clarity so as to use the powers of the United Nations Security Council selectively to authorize in the humanitarian sphere actions that were possibly unlawful.

69. Mr. YOKOTA said that, in paragraphs 33 to 38 of her preparatory document (E/CN.4/Sub.2/1994/39), Mrs. Palley examined whether the Security Council had the sole power to interpret its own mandate under the Charter of the United Nations or whether the International Court of Justice had the power to review such interpretation by the Security Council. The question was both pertinent and important in the context of the relationship between humanitarian activities and human rights because, in recent years, the Security Council had become more and more involved in both fields. It had, for example, decided to authorize United Nations peace-keepers or Member States to adopt enforcement measure to fulfil humanitarian objectives.

70. As a lawyer, he would tend to take the position of giving the International Court of Justice a power to review even the action or decisions of the Security Council, because such a position was more in line with the principle of the rule of law. That answer was not, however, without problems such as, for example, how swiftly the Security Council could act in a case of emergency if it was not certain of the legality of its decision.

71. Another legal issue to which Mrs. Palley had rightly drawn attention was whether the Charter provisions were to be interpreted literally or teleologically. The advisory opinions of the International Court of Justice in the compensation case and certain expenses case had said that the United Nations had certain powers not explicitly given by the Charter in order to achieve its purposes and objectives. That theory was often referred to as the "necessary implication" or "implied power" theory.

72. In paragraph 32 of her preparatory document, Mrs. Palley referred to the recent trend of convergence of humanitarian and human rights law, and even hinted at the possibility of integrating the two notions. In that connection, an article on "Human Rights and Humanitarian Law" by Karl Josef Partsch, published in the Encyclopedia of Public International Law, vol. 8, argued that, traditionally, the term "human rights law" had been primarily employed for rules valid in times of peace between the individual and his State while "humanitarian law" usually designated the rules valid in times of war or armed conflict between a belligerent and the nationals of an enemy State. The article went on to say that the rules on the two categories had developed separately and without any connection between them but that, nevertheless, the antagonism which had formally existed between the two concepts had faded away. His own view was that it was still useful to retain the traditional definitions of those two systems of law and to treat them separately.

73. "Humanitarian activities", on the other hand, referred to activities to relieve the sufferings of victims of natural disasters or political, economic and social disorder or suppression, by providing water, food, shelter, medicine, medical services, etc. In other words, humanitarian activities were designed to ensure the enjoyment of basic human rights by the victims of a disaster, whether natural or political.

74. In addressing the topic of the implications of humanitarian activities for the enjoyment of human rights, it was important to distinguish between ar to define clearly several relevant interrelated terms such as human rights, human rights law, humanitarian law and humanitarian activities.

75. In conclusion, he strongly supported the comprehensive study proposed b Mrs. Palley for the reasons which she had so abundantly and eloquently illustrated.

76. Mr. EIDE said that the scope of the proposed study was vast and it woul represent a substantial task. While supporting the initiative, he could visualize many questions being raised on the issues. He hoped that Mrs. Palley would present the various arguments in such a way that the Sub-Commission would be able to assess the different views concerning which body should interpret the Charter.

77. Many years had passed since the International Court of Justice had made serious blunder in the South Africa case. Fortunately, the composition of th International Court of Justice had since changed; it had become a different instrument and had much greater credibility. While, at the earlier stage, he would not have been very enthusiastic about leaving the issue to the International Court of Justice, he thought that its jurisdiction had become much more acceptable. A dilemma existed, however, and the Sub-Commission would have to explore the arguments for and against in greater detail.

78. While views would continue to differ for some time, the proposed study would be useful if it could present and systematize the arguments for and against the issues raised in the different sets of questions. The founding fathers of the United Nations could not possibly have foreseen all the changes that had taken place since the Charter had been adopted. Consequently, thoug it was very important to hold fast to the basic Purposes and Principles, there was no reason to be strictly limited by the perception held with respect to their exact scope of competence at the time when the Charter had been adopted.

79. He supported the theory of implied power but there again there were different views. The usefulness of the study would be that it would present the Sub-Commission with the different arguments and the different consequences of those arguments. The proposal in paragraph 44 regarding the gathering of information on modalities and how they affected economic, social and cultural rights and possibly civil and political rights would involve a vast amount of work. While he would be happy to see such an analysis, he thought it would be virtually impossible to realize since it would have to go through a wide range of agencies and a very wide range of possible consequences. Still, a certain amount of work was currently being done on all those matters, and putting it all together would itself be a major achievement.

80. Resistance to the proposed study had probably arisen from the assumption that it might somehow be used as a mechanism to put a brake on developments in the field of humanitarian activities. In his view, however, if the study was carried out in such a way that the arguments were impartially and objectively presented, it would deepen understanding of the various consequences and implications and could not but be helpful.

81. Mr. KHALIFA said that Mrs. Palley's preparatory document was an outstanding one, and it was a pity that the Commission, by its decision 1994/103, had delayed the appointment of a special rapporteur. The Sub-Commission should reiterate its request to the Commission in that regard, as the topic was a most urgent and timely one.

82. Bona fide humanitarian assistance was a duty of human solidarity, but it was a very different story when "humanitarian assistance" became a cloak for interfering in the internal affairs of a State and encroaching on its sovereignty. His rejection of that doctrine rested on four main pillars: first, the fact that respect for national sovereignty was the cornerstone of international order and that no other principle should transcend its priority and vitality; secondly, that there was no such thing as humanitarian assistance pure and simple, and that, if used as a substitute for political action, it could turn crises into tragedies; thirdly since the end of the cold war, the letter and spirit of international law had become easier to pervert in the interests of individual Powers; and fourthly, the chaotic spread of interventionism would eventually find itself on a collision course with the criss-crossing of interests among the major Powers.

83. He found it difficult to understand how anyone who believed in human rights could allow interference to become a standard procedure and justify it by invoking humanitarian reasons. While he fully agreed that the wild horse should be broken before it broke loose, he concurred with Mrs. Palley that, before any right of intervention became applicable, several legal points needed to be settled and criteria and procedures agreed upon in advance as a sine qua non for the legitimization of any so-called humanitarian activities.

84. Mr. Bengoa took the Chair.

85. Mr. CHERNICHENKO said that, while he had previously been sceptical of the sort of study proposed by Mrs. Palley, she had convinced him that it was essential. The competence of the Security Council was at the very heart of the United Nations Charter. Many criticisms would undoubtedly be made of her preparatory documents, but the Sub-Commission should give her its full moral - and if necessary legal - support. A reference in paragraph 7 of the further preparatory document (E/CN.4/Sub.2/1994/39) gave the impression that the multinational forces used against Iraq to free Kuwait were United Nation forces. That was an arguable point, but he thought that such was not the case. The legal justification for the use of those forces was apparently Article 51 of the Charter, which set forth the right of individual or collective self-defence. In that connection, a new military doctrine had recently been adopted by the Russian Federation, stipulating that Article 51 of the Charter could be invoked in the case of attacks not only on Russian territory, but also on its citizens elsewhere. The proposed study would be quite useful in evaluating that new doctrine.

86. The Commission had been over-hasty in asking the Sub-Commission to review its decision to appoint Mrs. Palley as special rapporteur on the question. The Sub-Commission should reaffirm its decision and strongly recommend her appointment. In any event, it was the Sub-Commission alone, not the Commission on Human Rights, the International Law Commission or the Security Council, which would deal with the outcome of the proposed study, simply by its experts expressing their views.

87. Mr. JOINET said that, according to the Guidelines concerning the Sub-Commission's methods of work, the number of ongoing studies entrusted to special rapporteurs should not exceed 13 (Guideline No. 1). There were currently 12 studies under way, leaving room for one more. The Sub-Commission should, consequently, make sure that no further studies were proposed. The reforms of the Sub-Commission's working methods required that the members should coordinate new studies and the appointment of special rapporteurs.

88. Mr. ALFONSO MARTINEZ said that the Guidelines adopted by the Sub-Commission in its resolution 1992/8 constituted a general recommendation, establishing a general principle, and not rules of procedure. Even if there were a maximum number of studies to be carried out, the Sub-Commission could recommend to the Commission that the number be increased.

89. Mr. CHERNICHENKO said that Mr. Joinet had earlier said that the Guidelines should not be considered as dogma. Perhaps as many as 14 or 15 studies would be acceptable but the Sub-Commission should exercise moderation. The study on the right to a fair trial which he had undertaken with Mr. Treat would, in any case, be completed in 1994, thus reducing the number of ongoing studies from 12 to 11 and permitting a certain flexibility.

90. Mr. JOINET said he did not remember having used the word "dogma". It was a case of saying "Do what I tell you, not what I do". The Sub-Commission had adopted the Guidelines and even, if they were not hard and fast rules, it should implement its decisions in good faith, as requested by the Commission.

91. Mrs. PALLEY said that, while she agreed in principle with Mr. Joinet, she thought that the Sub-Commission should take another look at the Guidelines to see if it wished to adhere to them. The Guidelines did not define what was meant by a "study", though they did make clear that a study consisted of a preliminary report, one or more progress reports and a final report. They did, however, distinguish a study from a preparatory document, a plan of action, a letter from a member or an annual report providing an update on a State in emergency. Having enumerated a number of papers on which work was still in progress, she said that the Sub-Commission would still be well within the limit if it were to recommend a new study, especially since three more studies would be completed in the current year.

92. Ms. WARZAZI asked the Secretariat for a list of genuine ongoing studies. If it was unable to show that the number of studies could be reduced, she would be willing to set aside her own study in favour of those of Mr. Chernichenko and Mrs. Palley.

93. Mr. JOINET seconded Ms. Warzazi's request to the Secretariat and said that, in any case, he was in favour of Mrs. Palley carrying out her study.

The meeting rose at 6 p.m.